

*United States Court of Appeals
for the Second Circuit*



**SUPPLEMENTAL
APPENDIX**

74-1584

B P/5

UNITED STATES COURT OF APPEALS
For the Second Circuit

Docket Nos. 74-1584
74-1636

SCIENTIFIC HOLDING COMPANY, LTD.,

Plaintiff-Appellant,

- against -

PLESSEY INCORPORATED,

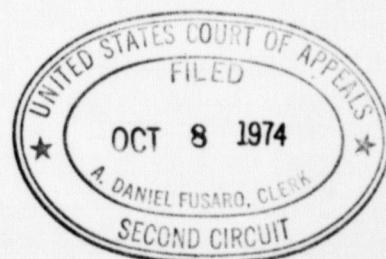
Defendant-Appellee.

SUPPLEMENTAL APPENDIX

ROGERS & WELLS
Attorneys for Defendant-
Appellee Plessey Incorporated
200 Park Avenue
New York, New York 10017
(212) 972-7000

OF COUNSEL:

William F. Koegel
James J. Maloney
John B. Koegel



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PAGINATION AS IN ORIGINAL COPY

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MR. 177 ONLY

Bonsal, d.

323-24



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
SCIENTIFIC HOLDING CO., Plaintiff, : 72 Civil 4040(DBB)

against- : JUDGMENT

PLESSEY, INC., Defendant. :
----- X

The issues in the above entitled action having been brought on regularly for trial before the Honorable Dudley B. Bonsal, United States District Judge, and a jury on March 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 25, 26 and 27, 1974, and the Court having submitted the attached special verdict to the jury, and the jury having answered the special verdict as indicated thereon, and the jury having returned the special verdict in favor of the defendant dismissing the complaint, and the jury having also returned the special verdict in favor of the plaintiff dismissing the counter-claims of the defendant, and the Court having directed the entry of judgment, it is,

ORDERED, ADJUDGED AND DECREED, that defendant, PLESSEY, INC., have judgment against the plaintiff, SCIENTIFIC HOLDING CO., dismissing the complaint, and it is further,

ORDERED, ADJUDGED AND DECREED, that the plaintiff, SCIENTIFIC HOLDING CO., have judgment against the defendant, PLESSEY, INC., dismissing the counterclaims.

Dated: New York, N. Y.

March 29, 1974

Raymond F. Burghardt
3/29/74
clerk

APPROVED: 3/29/74

D. B. Bonsal

United States District Judge. @

SE. 369

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At a Stated Term of the United States District Court
for the Southern District of New York, held in the
United States Court House in the Borough of Man-
hattan, City of New York on the
day of in the year of our Lord, One
Thousand Nine Hundred and .

PRESENT:

NT:
HONORABLE: Dudley B. Bonsal
United States District Judge.

SCIENTIFIC HOLDING CO
VS
PLESSEY INC

Docket No. 72 Crv 404 C

Now comes the Plaintiff By MCCONNELL, MARON & BORST
By JOHN MCCONNELL

and moves the trial of this cause. Likewise comes the Defendant by ROGERS & WELLS
BY JAMES MALONEY

Thereupon a Jury is duly empaneled and sworn, and the cause proceeds to Trial. MAR 7 1974

MAR 1 1974 MAR 11 1974 MAR 12 1974 MAR 13 1974 MAR 14 1974

MAR 1 1974 6:15 PM '74 MAR 21 1974 PLAINTIFF PLAINTIFF

RETS MOTIONS DENIED BONSAI T. 11. 1. 1974

MON. 16. 1974 BATH SITES RESTS MÉM. TO BUSINESS

FOR TURBINE ENGINE TESTS 1961-1962

BENNETT, SHUMAKER & COUNSEL

WITNESSED, SUMMARIZED, BY COUNSEL
PAPERS OF CHARGE IN THIS CASE.

THE WITNESS IS IN THE COURT, MARSHALS

SHAWAN. JURY VERDICT IN FAVOR OF D.
SEE 84-16168

SEE SCHEDULE H, ATTACHED ENTER

JUDGEMENT

BONSAI T

BON SAL, J.

With Respect to Plaintiff's Claims

1. Did Plessey breach paragraph 5(d) of the contract dated February 4, 1970 (Ex. 3), as amended by the Feb. 18, 1970 letter (Ex. 4) and on March 2, 1970 (Ex. 5), by assuming management control on June 9, 1970?

Yes

No

2. Did Plessey breach paragraph 5(d) of the contract dated February 4, 1970 (Ex. 3), as amended by the Feb. 18, 1970 letter (Ex. 4) and on March 2, 1970 (Ex. 5), by failing to continue the business of ISL in good faith during the measuring year (April 1, 1970 - March 31, 1971)? (See Ex. 3, Para. 5(d).)

Yes

No

If your answer to either 1 or 2 is "Yes", answer 3.

3. Did the plaintiff sustain damage by reason of the breach(es)?

Yes

No

4. At the time Plessey entered into the contract with ISL, did Plessey deceive ISL into believing it would be allowed to operate the business of ISL in a manner which would maximize profits, when in fact Plessey intended to integrate ISL's business with its overall operations and to take over management as soon as possible, notwithstanding the provisions of paragraph 5 of the contract?

Yes

No

5. If your answer to 4 is "Yes", did ISL sustain damage by reason thereof?

Yes

No

Thomas J. Mulholland
Foreman

SCIENTIFIC HOLDING COMPANY, LTD. v. ISL,
12 CIV. 4910

With Respect to Plessey's Counterclaims

1. Did Plessey rely on the warranties contained in paragraph 10(d) and (g) of the contract (Ex. 31)?
Yes No
2. Did ISL breach the warranties contained in paragraph 10(d) and (g) of the contract?
Yes No
3. If your answer to both 1 and 2 is "Yes", did Plessey sustain damage by reason thereof?
Yes No
4. Did ISL deceive Plessey by making the representations and warranties in the contract, knowing that these representations and warranties were false with respect to inventory and accounts payable?
Yes No
5. If your answer to 4 is "Yes", did Plessey sustain damage by reason thereof?
Yes No

J. L. James D'Amelio
Foreman

4444 West 76th Street, Minneapolis, Minnesota 55435 612/920-8800

**DATA 100
CORPORATION**

4 February 1970

International Scientific Limited
P.O. Box 625
Bridgetown, Barbados,
West Indies

Gentlemen:

Pursuant to our letter agreement of September 24, 1969, you have obtained a loan of \$200,000 which has been guaranteed by DATA 100 Corporation. As provided in that loan agreement, you have pledged to us 135,623 shares of Class A Capital Stock and 101,153 shares of Class B Capital Stock of International Scientific Limited as security for our obligation under that guarantee.

You have failed to fulfill your obligations under that letter agreement and other agreements with us within the agreed time allowed. You therefore are in default under the terms of your pledge to us of the above described stock.

This is to advise you that it is our present intention to retain the pledged shares and take title to same according to our rights under the applicable statutes.

If, at any time within 30 days of this notice of default, you are able to cure said default either by:

1. Repayment of the guaranteed loan and subsequent release of DATA 100 from the guarantee then the shares will be released to you; or
2. By the substitution of another party as guarantor and the subsequent release of DATA 100 from the guarantee then the shares will be released to you; or
3. By further negotiations with DATA 100 or some other party, satisfy us that an extension of time is warranted,

then the exercise of our rights will be postponed.

Very truly yours,

DATA 100 Corporation

Henry M. Connor

Henry M. Connor
Secretary

HMC:sir

DATE: March 5, 1970.

To: R. Carlen
L.G. Haggerty
V.L. Johnson
L.G. Van Bellingham

From: E.A. Kovar

Subject: Plessey Acquisition and ISL Liquidation

Attached hereto are the minutes of the two Shareholders' Meetings approving the sale to Plessey.

Also attached are the unaudited 1969 financial reports. You will note a sizeable difference between earlier estimations and final results. The major causes of this difference are separately noted, however, it is quite clear that the financial deterioration of the company was very rapidly gaining momentum.

As a result of this deterioration, Plessey stated that it would have to put in \$800,000 at the outset, rather than \$600,000. It said it would do this, but would charge ISL 10% for the extra \$200,000. All other monies subsequently put in (over the \$800,000) shall be without charge. We discussed this point at length, but they were obdurate and I had no choice but to agree.

We have not yet received government official approval for Scientific Holding to be tax-free and to have fully repatriable funds, and so I have not deposited the \$180,000 check.

Most of the debenture holders have indicated that they waive their stock warrants and wish to stand as creditors to Scientific Holding Company, Ltd. Thus, of 45 debentures, holders of 29 debentures have so indicated. The face value of the debentures so involved is \$359,342.34. The additional redemption cost for these debentures is \$17,211.33. Interest from March 1, 1970 to June 1, 1971 (possible closing date) would be \$35,934.23. A total cost of \$412,487.90 results. The number of shares waived so far is 165,341.

There are 3 debentures, holders of which have decided to convert their debentures, via the warrants, to stock. The face value of the debentures thus involved is \$21,600.00. The total redemption cost is \$3,204. The number of shares thus involved is 13,604.

- continued -

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We have yet to hear from the following:

	<u>Face Value</u>	<u>No. of Shares</u>	<u>Early Redempt.</u>
Ed Tobey	\$ 25,000	\$ 16,000	\$ 1,250
Ted Murray	10,000	5,400	500
Larry Haggerty	35,000	20,000	1,600
Art Albert	9,000	4,500	315
Bob Anderson	4,000	2,000	140
Paul Kristensen	400	200	14
Ron Keppel	800	400	28
Bill Williams	<u>5,000</u>	<u>2,000</u>	<u>150</u>
	<u>\$ 89,200</u>	<u>\$ 51,500</u>	<u>\$ 3,997</u>

To recap:

	<u>Face Value</u>	<u>No. of Shares</u>
Creditors waiving warrants	\$ 359,342.34	145,341
Creditors becoming shareholders	\$ 21,666.68	13,864
Uncommitted	<u>\$ 89,200.00</u>	<u>51,500</u>
	<u>\$ 470,209.02</u>	<u>230,705</u>

There are 462,470 shares currently issued. There are 18,000 possible option shares. There are 13,864 warrant shares being exercised. The possible total of shares is, therefore, 476,334 to date.

If the full \$1,440,000 were realized (less an estimated \$5,000 - \$10,000 expenses plus an estimated \$10,000 - \$13,000 interest income which here we will assume to be a washout), and if all uncommitted warrant holders waive their warrants, the distribution will look as follows:

Estimated Creditors Payout

Face Value	\$ 440,542
Early Redempt.	21,203
Interest	44,854
	<u>\$ 514,704</u>

Estimated Avail. for Distrib. \$ 925,296

Estimated Per Share \$ 1.94

RAW/mf

E. Allan Kovar

PK26 DR-Z
CO.

2/1/70: DR CO. cont'd.
2/1/70
ADM

February 6, 1970.

meant 1/5
DR CO. 1/6-60
ADM is named
below 2/6/70

Warren J. Sinsheimer,
President,
Plessey Co., Inc.,
660 Madison Avenue,
New York, N.Y.,
U.S.A.

Dear Warren:

Prior to your Barbados visit, I thought it would be well to summarize for you my thoughts on the future structuring of the U.S. Plessey memory activities.

I believe that the structure can, and should, utilize the advantages of both a U.S. business and a Barbadian business. The low cost and no tax advantages of Barbados can be coupled with the engineering and service proximity of the U.S.

I suggest that the business be continued under the name International Scientific Limited with all stationery, forms, and advertisements carrying the ISL logo and the ISL name coupled with the following phrase beneath the ISL name:

"A PLESSEY Company"

The name of ISL has an established value in the U.S., and the above combination would continue that value with the added value of the well-established Plessey name.

To maintain the present low marketing cost (less than 3% of sales) as well as to maintain the tax-free status of our U.S. sales, I suggest the continuation of the sales representative method of marketing. This method should be strengthened, however, with the addition of a Company Marketing Director and several more Applications Engineers. These individuals can be stationed in the U.S.

- .../2

To: Warren J. Sinsheimer

February 6, 1970.

The Engineers, however, should spend at least one to two weeks in Barbados every two months. They should be assigned a particular area of the country and should work with the rep(s) in that area to provide deeper engineering interface with the customers from that area. Their regular visits to Barbados are to make sure that they remain, in fact, applications engineers, who will follow through to production the memory products we build for their customers. This will not only ensure more accurate and expeditious start-ups, but will also keep their view point directed toward the pragmatics of memory design.

We have an excellent Applications Engineer in Ron Keppel, but he does need help.

The U.S. office should also have test and repair capabilities. While our current repair turn around time is less than two weeks, a U.S. based facility would reduce import-export costs, and could also be a sales advantage.

Finally, with engineering being located in the U.S., a U.S. prototype facility would also be helpful. At this point, however, tax counsel should be obtained to determine if such a facility would endanger the no-tax aspect of the Barbados sales procedure.

We believe that we have a remarkably fine group of sales representatives whose capabilities and reputation are quite excellent. With further engineering support along with professional marketing direction plus the expanded line of Plessey memory products, they should be able to provide the increased sales we both know the market offers.

We have seriously considered leaving Kennedy Airport as our import-export station for Miami. Kennedy is becoming extremely congested and the winter weather also creates Furthermore, there are air freight planes serving Barbados from Miami. If this move were made, it might be well for Plessey-ISL to operate its engineering-service facility in Florida, with purchasing and import-export also being handled from that location.

.../3

To: Warren J. Sinsheimer February 6, 1970.

It may well be that the Plessey memory systems will need some electronic and packaging redesign for better acceptance in the U.S. market. Design engineers would also, then, be employed at the same location.

Temporarily, at least, I would like to arrange for the use of the Plessey Electronics purchasing facilities. We can continue to use Scientific Trading Corporation as the import-export agent, and material deliveries can be made directly to it. Intersil Ltd., our present purchasing agent, has not done a satisfactory job, and this change should be made as quickly as possible.

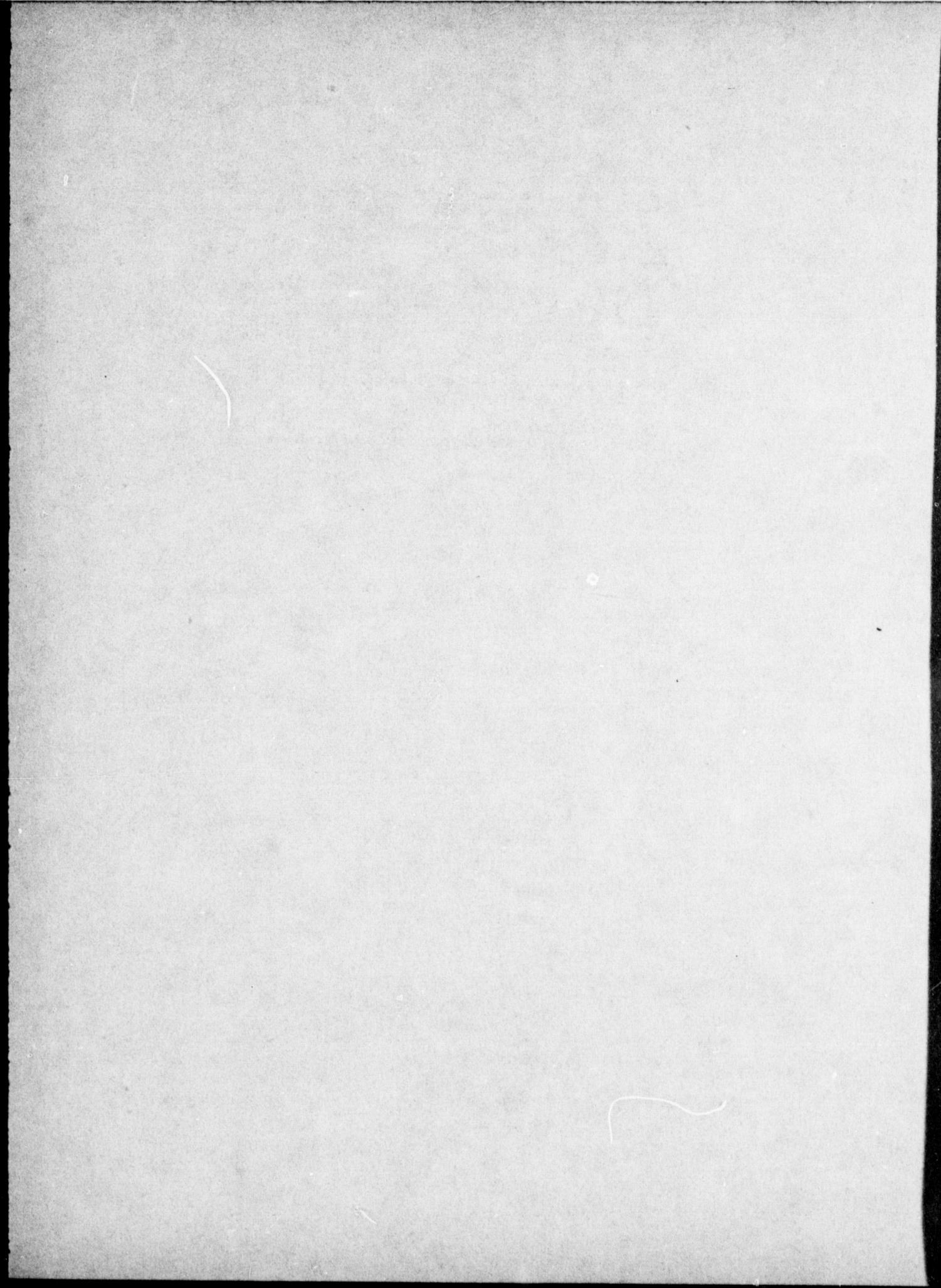
I look forward to getting together with you and shall meet you at the airport upon your arrival.

Regards.

Sincerely,

B. Allan Kovar,
President.

EAK/mf



COPY RECEIVED (2)
Date: 10/4/74
Time: 1:30 PM
Silberfeld, Danziger & Bangser
Attorneys for ~~City - Corp~~
By: WJ